



4

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:

**KIM A. ANDERSON ET AL.**

Serial No. **09/995,257**

Filing Date: **November 27, 2001**

For: **IDENTIFICATION SYSTEM AND  
METHOD FOR DETERMINING THE  
GEOGRAPHIC ORIGIN OF A FRESH  
COMMODITY**

Art Unit: **2122**

RECEIVED

JUL 30 2002

OFFICE OF PETITIONS

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The Hon. Commissioner for Patents  
Washington, D.C. 20231

Sir:

**PETITION UNDER 37 CFR 1.47**

Come now the Applicants in the above-identified utility application, and respectfully petition the Commissioner of Patents and Trademarks to receive the completion of all formal filing requirements, the enclosed declaration unsigned by inventors Kim A. Anderson, Brian Smith, and Bernadene Magnuson.

The attached copy of Declaration establishes that inventors Kim A. Anderson, Brian Smith, and Bernadene Magnuson are recognized to be joint inventors of the apparatus and method set forth in the above-identified utility application and that efforts to obtain these inventors' signatures upon the requisite filing documents have met with no success, as also attested by the attached Declaration of the undersigned.

The invention is a continuation-in-part of issued U.S. Patent No. 6,324,531, which named the same inventors as herein named. Copies of signed declarations and assignments for that patent are enclosed herewith, indicating the inventors' declarations

of their status as inventors and assigning the rights to the '531 patent and continuation and divisional applications therefrom to the Florida Department of Citrus and the Idaho Potato Commission.

It is respectfully submitted that these facts, together with the showing in the attached Declaration, make it clear that Applicants have met all of the requirements under 37 CFR 1.47.

Wherefore, it is respectfully requested that the Commissioner receive and grant this petition for the purposes of filing this application without the signature of inventors Anderson, Smith, and Magnuson.

Respectfully submitted,

  
\_\_\_\_\_  
Jacqueline E. Hartt, Ph.D.

Reg. No. 37,845

ALLEN, DYER, DOPPELT, MILBRATH & GILCHRIST, P.A.

255 South Orange Avenue, Suite 1401

P.O. Box 3791

Orlando, Florida 32802

(407) 841-2330

Agent for Applicant

**CERTIFICATE OF MAILING**

I hereby certify that the foregoing is being deposited with the United States Postal Service as first class mail in an envelope addressed to the Commissioner of Patents, Washington D.C. 20231, this 12th day of June, 2002.

  
\_\_\_\_\_  
Edward Bradley



HERBERT L. ALLEN  
ROBERT DYER  
AVA K. DOPPELT  
STEPHEN D. MILBRATH  
BRIAN R. GILCHRIST  
CHRISTOPHER F. REGAN  
DAVID L. SIGALOW  
RICHARD K. WARTHER  
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DAVID W. HENRY  
BARBARA RUDOLPH SMITH  
BRANDY C. HILL

OF COUNSEL:  
CHARLES E. WANDS

PATENT AGENTS:  
JACQUELINE E. HARTT, PH.D.  
MARK R. MALEK  
CARL M. NAPOLITANO, PH.D.

**ALLEN, DYER, DOPPELT  
MILBRATH & GILCHRIST, P.A.**

**ATTORNEYS AT LAW**

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•  
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& Litigation  
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MELBOURNE, FL 32901  
321-725-4780/3741  
321-884-7078 FAX

May 17, 2002

**Federal Express**

Dr. Kim Anderson  
7555 NW McDonald Circle  
Corvallis, OR 97330

Mr. Brian Smith  
7555 NW McDonald Circle  
Corvallis, OR 97330

**Federal Express**

Dr. Bernadene Magnuson  
Assistant Professor  
University of Maryland  
Dept. of Nutrition and Food Science  
3304 Marie Mount Hall  
College Park, MD 20742-7251

Re: Continuation-in-Part Patent Application for  
**Identification System and Method for Determining the  
Geographic Origin of a Fresh Commodity**  
Our File No. 21652.CIP1

Dear Dr. Anderson, Mr. Smith and Dr. Magnuson:

We have filed the above-referenced continuation-in-part utility patent application specification, which claims priority to an earlier filed utility patent application on which you were a named inventor. We are enclosing a copy of the continuation-in-part application along with a Declaration requiring your signature and an Assignment requiring your signature with a notarization.

If for some reason you cannot sign these documents, please notify us in writing in response to this letter. If you have any questions on the enclosed documents, please feel free to call me. Thank you for your prompt attention to this matter.

Sincerely,

Jacqueline E. Hartt, Ph.D.

JEH/lmd  
Enclosures

From: JACQUELINE E. HARTT, PH.D (407)841-2330  
ALLEN DYER DOPPELT MILBRATH  
255 S. ORANGE AVENUE  
SUITE 1401  
ORLANDO, FL, 32801



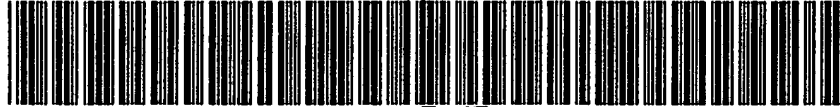
**FedEx**

To: Dr. Kim Anderson & Mr. Brian Smith (407)841-2330

7555 NW McDonald Circle

Corvallis, OR, 97330

Ref: 21652.CIP1



DELIVERY ADDRESS BARCODE (FEDEX-EDK)

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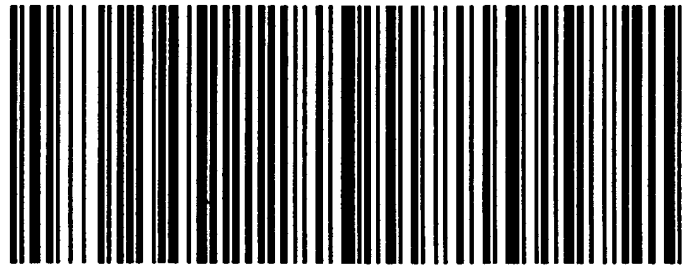
97330-OR-US

**XE CVOA**

TUE

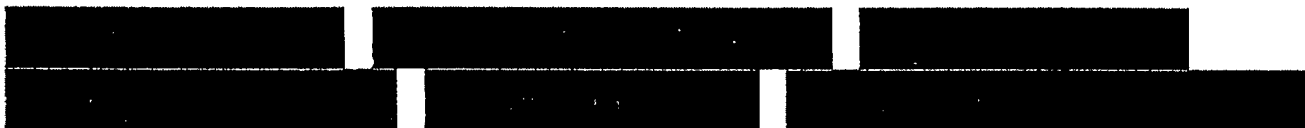
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From: JACQUELINE E. HARTT, PH.D (407)841-2330  
ALLEN DYER DOPPELT MILBRATH  
255 S. ORANGE AVENUE  
SUITE 1401  
ORLANDO, FL, 32801

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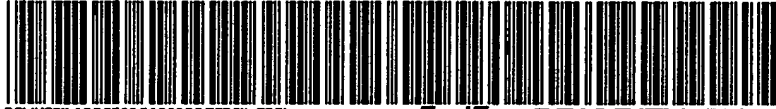


**FedEx.**

To: Dr. Bmad n Magnuson (407)841-2330  
Univ rsity f Maryland  
3304 Marie Mount Hall  
Dept. of Nutrition and Food Science  
College Park, MD, 207427251

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Ref: 21652.CIP1



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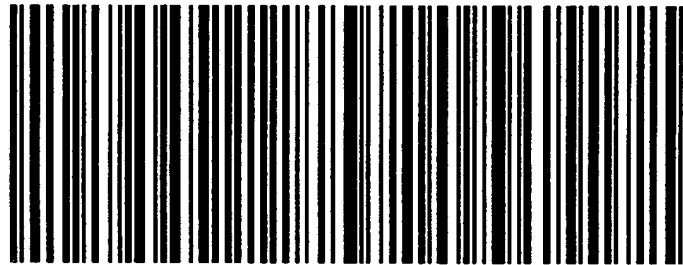
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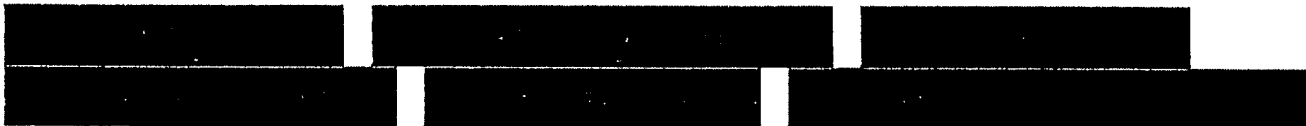
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FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$500, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see current FedEx Service Guide.

From: "Bernadene Magnuson" <bm150@umail.umd.edu>  
To: <jhartt@addmg.com>  
Subject: Documents  
Date: Thu, 23 May 2002 11:39:52 -0400  
X-Mailer: Microsoft Outlook Express 5.50.4133.2400

Dear Dr. Hartt:

I cannot sign the documents you forwarded to me on May 17th, 2002.  
This email serves as the written response you requested.

B. Magnuson

\*\*\*\*\*

Dr. Bernadene Magnuson  
Assistant Professor  
Dept of Nutrition and Food Science  
3304 Marie Mount Hall  
University of Maryland  
College Park, MD 20742-7521  
Phone: 301-405-4523  
Fax: 301-314-9327  
Email: [bm150@umail.umd.edu](mailto:bm150@umail.umd.edu)

Date: Sun, 26 May 2002 22:43:24 -0400  
From: Jacqueline Hartt <jacki.hartt@worldnet.att.net>  
Reply-To: jacki.hartt@worldnet.att.net  
X-Sender: "Jacqueline Hartt" <jacki.hartt@postoffice.worldnet.att.net> (Unverified)  
X-Mailer: Mozilla 4.06 [en]C-gateway.net (Win95; I)  
To: lynnette dewitz <ldewitz@addmg.com>  
Subject: [Fwd: new application]

Return-Path: <kim.anderson@orst.edu>  
Received: from bobo.nws.orst.edu ([128.193.4.11])  
by mtiwgwc21.worldnet.att.net  
(InterMail vM.4.01.03.27 201-229-121-127-20010626) with ESMTP  
id <20020523153506.HASD5713.mtiwgwc21.worldnet.att.net@bobo.nws.orst.edu>  
for <jacki.hartt@worldnet.att.net>;  
Thu, 23 May 2002 15:35:06 +0000  
Received: from feynman.als.orst.edu (feynman.ALS.ORST.EDU [128.193.221.113])  
by bobo.nws.orst.edu (8.9.3+Sun/8.9.3) with ESMTP id IAA19248  
for <jacki.hartt@worldnet.att.net>; Thu, 23 May 2002 08:35:58 -0700 (PDT)  
Received: by feynman.ALS.ORST.EDU with Internet Mail Service (5.5.2653.19)  
id <L1CWFS5N>; Thu, 23 May 2002 08:34:53 -0700

Message-ID:  
<0BB366CCD862D211846700A0C9ADFCB798683A@feynman.ALS.ORST.EDU>  
From: "Anderson, Kim" <kim.anderson@orst.edu>  
To: "jacki.hartt@worldnet.att.net" <jacki.hartt@worldnet.att.net>  
Subject: RE: new application  
Date: Thu, 23 May 2002 08:34:50 -0700  
MIME-Version: 1.0  
X-Mailer: Internet Mail Service (5.5.2653.19)  
Content-Type: text/plain;  
charset="iso-8859-1"

Jacki,  
Please consider this message as written response to your letter of May 20,  
2002, I can not as presented sign the CIP.

Sincerely,

Kim A. Anderson, Ph.D.  
Director / Food Safety and Environmental Stewardship Program  
Asst. Professor / Dept. Environmental and Molecular Toxicology  
Oregon State University  
Corvallis, OR 97331-7301  
Ph: 541-737-8501  
Fax: 541-737-0497

-----Original Message-----

From: Jacqueline Hartt

[mailto:[jacki.hartt@worldnet.att.net](mailto:jacki.hartt@worldnet.att.net)]

Sent: Friday, April 12, 2002 5:10 AM

To: Anderson, Kim

Cc: lynnette dewitz

Subject: Re: new application

hello again, kim - no, it isn't something you can get in trouble over -  
you are an inventor of the claimed invention, and, even though data may be gathered by someone else, the inventive concept was yours, and that is what we are claiming. that's the classic inventor/technician kind of split.

hope this helps - thanks again -

best, jacki

Anderson, Kim wrote:

>

> Yes,

> I did pick what the difference was between the two. My question, this is

> something you all had done at the Univ. of Idaho Laboratory. What I worry

> about is that I do not have a laboratory book demonstrating the data that is

> mentioned. This seems like something I could get into big trouble over.

> Yes?

>

> KIM

>

> Kim A. Anderson, Ph.D.

> Director / Food Safety and Environmental Stewardship Program

> Asst. Professor / Dept. Environmental and Molecular Toxicology

> Oregon State University

> Corvallis, OR 97331-7301

> Ph: 541-737-8501

> Fax: 541-737-0497

>

> -----Original Message-----



> From: Jacqueline Hartt  
> [mailto:jacki.hartt@worldnet.att.net]  
> Sent: Thursday, April 11, 2002 12:00 PM  
> To: kim.anderson@orst.edu  
> Cc: lynnette dewitz  
> Subject: new application  
>  
> dear kim - thank you so much for taking  
care of signing the  
> filing  
> documents for the new application.  
actually, you are right  
> - there  
> isn't too much difference, except for the  
following  
> paragraphs in the  
> "apparatus" section:  
>  
> In another embodiment, inductively  
coupled  
> plasma-optical emission  
> spectrometry (ICP-OES) may be used for the  
determination of  
> multiple  
> metal concentrations in the  
part-per-million to the upper  
> part-per-billion range. This method can  
quantify 14-18  
> elements that  
> are useful predictors of geographic  
origin.  
> In what is currently believed to  
be a best mode of  
> the present  
> invention, inductively coupled plasma-mass  
spectrometry  
> (ICP-MS) is used  
> to determine metal concentrations in the  
low  
> part-per-billion to upper  
> part-per-trillion range. ICP-MS utilizes  
a much more  
> sensitive detector  
> than the ICP-OES and acquires a relatively  
clean mass  
> spectrum, rather  
> than the more complex and noisy emission  
spectrum of

> ICP-OES. Further,  
> a lower signal-to-noise ratio leads to  
enhanced sensitivity,  
> which  
> allows quantification of several trace  
metals that are  
> present at levels  
> below the detection limits of ICP-OES.  
This is an important  
> consideration in geographic origin  
detection, since trace  
> elements,  
> rather than macro-elements, are more  
likely to uniquely  
> identify a  
> growing region.  
> In a study comparing ICP-OES to  
ICP-MS analysis of  
> approximately 400  
> potatoes, ICP-MS was shown to provide  
reliable  
> concentrations for an  
> additional eight elements, Cd, Co, Mo,  
Ni, Pb, V, Ga, and  
> Se, that were  
> not detectable by ICP-OES.  
>  
> the analytical system hasn't changed. we  
always think it  
> best to keep  
> applications pending in order to be able  
to reach into the  
> disclosure  
> for additional claims if needed/warranted.  
>  
>  
> thank you again -  
>  
> best, jacki hartt



(4)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:

**KIM A. ANDERSON ET AL.**

Serial No. **09/995,257**

Filing Date: **November 27, 2001**

For: **IDENTIFICATION SYSTEM AND  
METHOD FOR DETERMINING THE  
GEOGRAPHIC ORIGIN OF A FRESH  
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Art Unit: **2122**

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**JUL 30 2002**  
**OFFICE OF PETITIONS**

The Hon. Commissioner for Patents  
Washington, D.C. 20231

**COPY OF PAPERS  
ORIGINALLY FILED**

Sir:

**DECLARATION UNDER 37 CFR 1.47**

I, Jacqueline E. Hartt, do hereby declare and say as follows:

1. I am the agent of record in the above-referenced application and have worked with co-inventors Kim A. Anderson, Brian Smith, and Bernadene Magnuson, and the assignees, Florida Department of Citrus and Idaho Potato Commission, in the preparation and filing of provisional patent application 60/069,036, utility parent application 09/210,358, now issued U.S. Patent No. 6,324,531, and the above-referenced utility patent application, which claims priority to both the issued '521 patent and the '036 provisional application.

2. Correspondence with named co-inventors Kim A. Anderson, Brian Smith, and Bernadene Magnuson, related to the above-referenced application, began on April 10, 2002, with the sending of declarations to all named inventors. Several telephone calls have also been placed to co-inventors Anderson and Magnuson. The documents were also re-sent via Federal Express on May 21, 2002, for which copies of the transmittal letter, unsigned declaration, assignment, and shipping label are enclosed.

3. It is my understanding that the work and development by the co-inventors was within the scope of their employment with the Idaho Potato Commission, Co-Assignee.

4. Co-inventors Anderson and Magnuson have expressed via the enclosed e-mails their unwillingness to sign the transmitted inventor Declarations. No statements of any kind have been received from co-inventor Smith.

5. I hereby declare that all statements made herein are of my own accord and are true and that all statements are made on available information; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both, under Section 1001 of Title XVIII of the United States Code, and that any such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Dated: June 12, 2002.

Respectfully submitted,

  
\_\_\_\_\_  
Jacqueline E. Hartt, Ph.D.

Reg. No. 37,845  
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